

TTAB

UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD

Prairie Island Indian Community,                      Opposition Nos. 91115866  
a federally recognized Indian Tribe,                      and 91157981

Plaintiff,

v.

Treasure Island Corp.,

Defendant.

(as consolidated)

Cancellation Nos. 92028126;  
92028127; 92028130; 92028133;  
92028145; 92028155; 92028171;  
92028174; 92028199; 92028248;  
92028280; 92028294; 92028314;  
92028319; 92028325; 92028342;  
and 92028379

BOX TTAB  
COMMISSIONER FOR TRADEMARKS  
2900 Crystal Drive  
Arlington, VA 22202-3514

LETTER

Dear Trademark Trial and Appeal Board:

Enclosed herewith are the following documents:

1. The original and three copies of PLAINTIFF'S (PETITIONER'S) REPLY TO DEFENDANT'S (REGISTRANT'S) RESPONSE TO OSC RE-CANCELLATION FOR FAILURE TO FILE SECTION 8 AFFIDAVITS (RULE 2.134(a)) RE. U.S. REG. NOS. 1,949,279; 1,966,090; AND 1,981,369 and EXHIBITS A-B;
2. CERTIFICATE OF SERVICE ON TREASURE ISLAND CORP./MARK G. TRATOS; and
3. EXPRESS MAIL CERTIFICATE UNDER NO. EL984673140US.



07-27-2004

U.S. Patent & TMOs/TM Mail Rpt Dt. #22

Trademark Trial and Appeal Board  
July 27, 2004  
Page 2

Ex. Mail No. EL984673140US

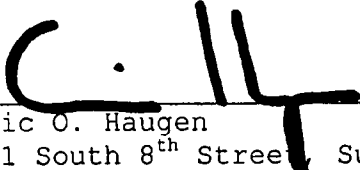
The Commissioner is authorized to charge any additional fees or refund any overpayment which may be required by this paper to Deposit Account No. 50-0789.

Of course, contact the undersigned with any questions you may have regarding the above.

Respectfully submitted,

HAUGEN LAW FIRM PLLP

Date: July 27, 2004

  
\_\_\_\_\_  
Eric O. Haugen  
121 South 8<sup>th</sup> Street, Suite 1130  
Minneapolis, Minnesota 55402  
Phone: (612) 339-8300

Attorney for Petitioner Prairie Island  
Indian Community, a Federally Recognized  
Indian Tribe

UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD

Prairie Island Indian Community,  
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BOX TTAB  
COMMISSIONER FOR TRADEMARKS  
2900 Crystal Drive  
Arlington, VA 22202-3514



07-27-2004

U.S. Patent & TMO/TM Mail Rpt Dt. #22

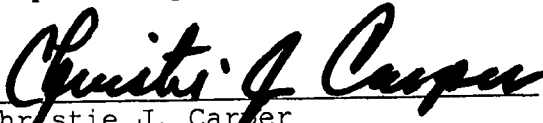
CERTIFICATE OF MAILING VIA EXPRESS MAIL

Sir:

I hereby certify that the attached: **PLAINTIFF'S (PETITIONER'S) REPLY TO DEFENDANT'S (REGISTRANT'S) RESPONSE TO OSC RE-CANCELLATION FOR FAILURE TO FILE SECTION 8 AFFIDAVITS (RULE 2.134(a)) RE. U.S. REG. NOS. 1,949,279; 1,966,090; AND 1,981,369 and EXHIBITS A-B**, in connection with the above-identified matter are being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to BOX TTAB, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3514, under Express Mail Label No. EL984673140US on July 27, 2004.

Respectfully submitted,

Date: July 27, 2004

  
Christie J. Carper  
On Behalf of Eric O. Haugen  
HAUGEN LAW FIRM PLLP  
121 S. Eighth Street, #1130  
Minneapolis, MN 55402

Attorneys for Petitioner,  
Prairie Island Indian Community  
a Federally Recognized Indian Tribe

UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD

Prairie Island Indian Community,  
a federally recognized Indian Tribe,

Opposition Nos. 91115866  
and 91157981

Plaintiff,

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Defendant.

(as consolidated)

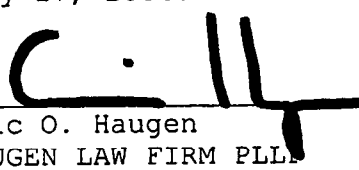
Cancellation Nos. 92028126;  
92028127; 92028130; 92028133;  
92028145; 92028155; 92028171;  
92028174; 92028199; 92028248;  
92028280; 92028294; 92028314;  
92028319; 92028325; 92028342;  
and 92028379

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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing PLAINTIFF'S (PETITIONER'S) REPLY TO DEFENDANT'S (REGISTRANT'S) RESPONSE TO OSC RE-CANCELLATION FOR FAILURE TO FILE SECTION 8 AFFIDAVITS (RULE 2.134(a)) RE. U.S. REG. NOS. 1,949,279; 1,966,090; AND 1,981,369 and EXHIBITS A-B, were served on Treasure Island Corp., c/o Mark G. Tratos of Quirk & Tratos, 3773 Howard Hughes Parkway, Suite 500 North, Las Vegas, NV 89109, Attorney for Registrant, via first class mail, postage prepaid on July 27, 2004.

Dated: July 27, 2004

  
Eric O. Haugen  
HAUGEN LAW FIRM PLLC  
121 S. Eighth Street  
1130 TCF Tower  
Minneapolis, MN 55402  
Telephone: (612) 339-8300

Attorney(s) for Petitioner,  
Prairie Island Indian Community,  
a Federally Recognized Indian Tribe

07-27-2004

U.S. Patent & TMO/TM Mail Rcpt Dt. #22

UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD

Prairie Island Indian Community,  
a federally recognized Indian Tribe,

Opposition Nos. 91115866  
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Plaintiff,

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Cancellation Nos. 92028126;  
92028127; 92028130; 92028133;  
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and 92028379

Treasure Island Corp.,

Defendant.

(as consolidated)

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PLAINTIFF'S (PETITIONER'S) REPLY TO DEFENDANT'S (REGISTRANT'S)  
RESPONSE TO OSC RE-CANCELLATION FOR FAILURE TO FILE SECTION 8  
AFFIDAVITS (RULE 2.134(a)) RE. U.S. REG. NOS. 1,949,279;  
1,966,090; AND 1,981,369

I. Introduction

Pursuant to this Board's Order dated June 22, 2004, Petitioner Prairie Island Indian Community (hereinafter "The Community") responds to Registrant Treasure Island Corp.'s (hereinafter "TIC") Response to the Order to Show Cause Relevant to the Trademark Office's Cancellation of U.S. Reg. Nos. 1,949,379 (hereinafter "'379 registration"); 1,966,090 (hereinafter "'090 registration"); and 1,981,369 (hereinafter "'369 registration"). The Community does not contend, at this point, that TIC intentionally allowed the '090 registration to be cancelled, and therefore will not be addressing any of the issues relevant to that registration in this reply. Conversely, The Community contends that TIC has wholly failed to show cause why the cancellations of U.S. Reg. Nos. 1,949,379 and 1,981,369

should not be deemed the equivalent of a cancellation by request of TIC without the consent of The Community. TIC has not shown why entry of judgment against it as provided by Trademark Rule 2.134 should not be lodged.

Per the June 22, 2004 Order from this Honorable Board, TIC is required to show "good and sufficient cause" as to why judgment should not be entered against it in this situation:

Plaintiff has filed a request that the Board issue additional show cause orders for Cancellation Nos. 92028174, 92028294, and 92028325 in light of the cancellation of the involved registrations under Section 8 as well.

Plaintiff's request is well taken. . . . In the absence of a showing of good and sufficient cause, judgment may be entered against respondent. See Trademark Rule 2.134(b).

See Pages 14-15 of the June 22 Order.

The Community's position regarding TIC's failure to meet its burden is set forth in greater detail below.

## II. Discussion

The Community commenced to these proceedings in September 1998 by filing Petitions to Cancel 17 TREASURE ISLAND based registrations that had been improperly obtained by TIC between 1993 and 1996. The Community adopted and has continuously used its TREASURE ISLAND mark since at least as early as January 1, 1990. The crux of the Community's position relevant to this proceeding is that it is the prior user of the mark TREASURE ISLAND, and that TIC's TREASURE ISLAND marks conflict with and are likely to cause confusion with The Community's use of the same.

Between July 2002 and March 2003, TIC allowed several of the 17 registrations that are the subject of this proceeding to be cancelled for failure to file Section 8 Affidavits. These registrations include the '379 registration and the '369 registration at issue in the instant Motion.

**A. Issues Particular to the '369 Registration**

TIC mischaracterizes several aspects of the '369 registration at issue in the Board's Order to Show Cause, as well as current use by TIC of this mark. On page 2 of its Memorandum, TIC states that:

The marks, which included the Parrot design, were deemed more a part of the old Treasure Island market rather than the new progressive "TI Treasure Island". Thus, the marks with the Parrot design, which include two of the three marks sought to be cancelled in this OSC, Registrations (sic) Nos. 1,949,379 and 1,981,369, were discontinued for these reasons ....

TIC's assertion that the '369 registration incorporated "the Parrot design" is absolutely untrue. In fact, the '369 registration covered the mark TREASURE ISLAND AT THE MIRAGE THE ADVENTURE RESORT. See Exhibit A. The '369 registration incorporated no design whatsoever, much less the supposedly abandoned Parrot design. It is strictly a word mark.

A further misstatement is contained in the Declaration of Mary Giuliano, submitted with TIC's response to the Show Cause Order. Ms. Giuliano indicates in her Declaration (attached as Exhibit B to TIC's response) that the mark TREASURE ISLAND AT THE MIRAGE THE ADVENTURE RESORT (the mark which is the subject of the '369 registration) was "discontinued", and that it was the subject of a "cessation of use" by TIC. In her Declaration, Ms. Giuliano asserts that the TREASURE

ISLAND AT THE MIRAGE THE ADVENTURE RESORT mark was discontinued "in approximately 1999". TIC's position with regard to this alleged abandonment is rendered incredible given the fact that on December 9, 2002, at least three years after TIC now contends it ceased use of the TREASURE ISLAND AT THE MIRAGE THE ADVENTURE RESORT mark, Treasure Island filed a Section 8 Affidavit with the Trademark Office indicating that the mark TREASURE ISLAND AT THE MIRAGE THE ADVENTURE RESORT, as used in connection with "casino services" was still in use. See Exhibit B.

The only reason asserted by TIC for allowing the '369 registration to go cancelled is that in 1999 "legitimate marketing decisions" dictated that the registration be abandoned. In fact, TIC (at least if its December 9, 2002 Trademark Office filings are accurate) did not abandon the mark in 1999 at all: in December of 2002, it represented to the Trademark Office that the mark was still in use and valid, at least as used in connection with casino services. In other words, TIC's asserted reason which purports to show cause as to why judgment should not be granted against it relevant to the '369 registration rings hollow. Judgment should, in fact, be rendered against TIC relevant to the '369 registration.

**B. Issues Relevant to the '379 and '369 Registrations**

TIC has allowed the '379 and '369 registrations to be cancelled under Section 8 of the Trademark Act. The circumstances surrounding the cancellation of these marks demonstrate that judgment should be entered against TIC and in favor of The Community with respect to these registrations.



37 CFR §2.134(b) dictates that "[i]n the absence of showing of good and of sufficient cause, judgment may be entered against a Respondent (who has permitted a registration at issue in the cancellation proceeding to be cancelled under Section 8 of the Act of 1946). The policy behind this rule is aptly stated in TBMP 602.02(b):

If Respondent submits a showing that the cancellation or expiration was occasioned by the fact that such abandonment was not made for the purpose of avoiding the proceeding but rather was the result, for example, of a two year period of non-use which commenced well before Respondent learned of the proceeding, judgment will be entered against it only in specifically on the ground of abandonment.

In connection with the two registrations substantively discussed in this Memorandum, TIC fully admits that it intentionally failed to file Section 8 Affidavits relevant to the subject registrations. TIC asserts that its use of the subject marks was discontinued as a result of business decisions dictated by a product placement strategy and market positioning. With regard to the '369 registration, The Community has shown above that, in fact, the mark TREASURE ISLAND AT THE MIRAGE THE ADVENTURE RESORT, that mark at issue in the '369 registration, was apparently, per TIC's representation, still in use in December 2002, three years after TIC now claims that it abandoned use of the mark. As for the '379 registration, TIC has vigorously asserted throughout this proceeding that the mark was valid, non-conflicting, in use, and owned by it, TIC. It is only now, seven years after this proceeding started, that TIC claims to have abandoned the mark as a result of "a business decisions in terms of product placement strategy and market positioning".

The TTAB has set forth examples of circumstances whereby a party in the position of TIC has successfully shown cause in abandonment-based circumstances. For example, in Marshall Field & Co. v. Mrs. Field's Cookies, 11 USPQ 2d 1154, 1156 (TTAB 1989) The Board found "good cause" for party's failure to file Section 8 Affidavits in the midst of an inter-party proceeding when the party required to show cause demonstrated a "deliberate business decision made well prior to the commencement" of the cancellation proceeding. In Marshall Field and Co., the demonstrating party had refrained from using the cancelled marks for a period of five years prior to the date that the inter-party proceeding was filed, and had made the unqualified representation that it did not intend to ever use the cancelled mark again. Here, unlike in the Marshall Field's situation, TIC did not refrain from using the cancelled registrations for any period of time before the proceeding commenced, TIC apparently still continues to use at least one of marks at issue, and TIC has not represented that it does not intend to ever use the marks at issue in the cancelled registrations again. As a point of fact, TIC vigorously contested The Community's efforts to cancel the very registrations that are at issue in this Order to Show Cause up until the very time that the registrations were cancelled.

The rules governing this proceeding as well as this Board's policies and the relevant case law concerning the subject at issue in this Order to Show Cause all lead to the conclusion that the Board should issue judgment against TIC and in favor of The Community relevant to the '379 and '369 registrations.

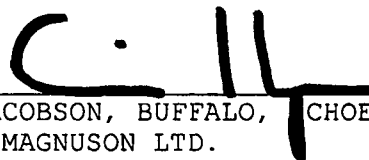
Conclusion

For the foregoing reasons, The Community respectfully requests an Order entering judgment against TIC and in favor of The Community relevant to cancelled Registration Nos. 1,949,379 and 1,981,369.

Respectfully submitted,

PRAIRIE ISLAND INDIAN COMMUNITY,  
A FEDERALLY RECOGNIZED INDIAN TRIBE

Date: July 27, 2004

  
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& MAGNUSON LTD.

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## Typed Drawing

**Word Mark** TREASURE ISLAND AT THE MIRAGE THE ADVENTURE RESORT  
**Goods and Services** (CANCELLED) IC 042. US 100 101. G & S: hotel services. FIRST USE: 19931122. FIRST USE IN COMMERCE: 19931122

**Mark Drawing Code** (1) TYPED DRAWING

**Serial Number** 74417694  
**Filing Date** July 23, 1993  
**Current Filing Basis** 1A  
**Original Filing Basis** 1B  
**Published for Opposition** September 20, 1994  
**Registration Number** 1981369  
**Registration Date** June 18, 1996  
**Owner** (REGISTRANT) Treasure Island Corp. CORPORATION NEVADA 3300 Las Vegas Blvd. South Las Vegas NEVADA 89109  
**Attorney of Record** Edward J. Quirk  
**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "RESORT" APART FROM THE MARK AS SHOWN  
**Type of Mark** SERVICE MARK  
**Register** PRINCIPAL

EXHIBIT

A

**Live/Dead  
Indicator**      DEAD  
**Cancellation Date**    March 22, 2003

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**Serial Number: 74417694**

**Registration Number: 1981369**

**Mark (words only): TREASURE ISLAND AT THE MIRAGE THE ADVENTURE RESORT**

**Standard Character claim: No**

**Current Status: Registration canceled under Section 8.**

**Date of Status: 2003-03-22**

**Filing Date: 1993-07-23**

**Transformed into a National Application: No**

**Registration Date: 1996-06-18**

**Register: Principal**

**Law Office Assigned: LAW OFFICE 106**

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**Current Location: 849 -TTAB**

**Date In Location: 1999-03-11**

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**LAST APPLICANT(S)/OWNER(S) OF RECORD**

---

**1. Treasure Island Corp.**

**Address:**

Treasure Island Corp.  
3300 Las Vegas Blvd. South  
Las Vegas, NV 89109  
United States

**Legal Entity Type: Corporation**

**State or Country of Incorporation: Nevada**

---

**GOODS AND/OR SERVICES**

---

**International Class: 042**

hotel services

**First Use Date:** 1993-11-22

**First Use in Commerce Date:** 1993-11-22

**Basis:** 1(a)

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**ADDITIONAL INFORMATION**

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**Disclaimer:** "RESORT"

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**MADRID PROTOCOL INFORMATION**

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(NOT AVAILABLE)

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**PROSECUTION HISTORY**

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2003-03-22 - Canceled Section 8 (6-year)

1999-03-12 - Cancellation instituted for Proceeding

1996-06-18 - Registered - Principal Register

1996-03-14 - Allowed for Registration - Principal Register (SOU accepted)

1996-03-06 - Statement of use processing complete

1996-01-11 - Amendment to Use filed

1995-09-05 - Notice of allowance - mailed

1994-10-04 - Extension of time to oppose - Filed

1994-09-20 - Published for opposition

1994-08-19 - Notice of publication

1994-05-20 - Approved for Pub - Principal Register (Initial exam)

1994-04-12 - Case file assigned to examining attorney

1994-03-31 - Correspondence Received In Law Office

1994-01-26 - Non-final action mailed

1993-12-17 - Case file assigned to examining attorney

1993-12-15 - Case file assigned to examining attorney

1993-11-30 - Case file assigned to examining attorney

1993-11-17 - Case file assigned to examining attorney

---

**CONTACT INFORMATION**

---

**Correspondent**

Edward J. Quirk (Attorney of record)

MARK G. TRATOS  
QUIRK & TRATOS  
3773 HOWARD HUGHES PARKWAY SUITE 500 NOR  
TH  
LAS VEGAS, NV 89109

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<b>Word Mark</b>	TREASURE ISLAND AT THE MIRAGE THE ADVENTURE RESORT
<b>Goods and Services</b>	IC 041. US 100 101 107. G & S: casino services. FIRST USE: 19931027. FIRST USE IN COMMERCE: 19931027
<b>Mark Drawing Code</b>	(1) TYPED DRAWING
<b>Serial Number</b>	74417693
<b>Filing Date</b>	July 23, 1993
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1B
<b>Published for Opposition</b>	November 21, 1995
<b>Registration Number</b>	2024221
<b>Registration Date</b>	December 17, 1996
<b>Owner</b>	(REGISTRANT) Treasure Island Corp. CORPORATION NEVADA 3300 Las Vegas Blvd. South Las Vegas NEVADA 89109
<b>Assignment Recorded</b>	ASSIGNMENT RECORDED
<b>Attorney of Record</b>	Edward J. Quirk
<b>Disclaimer</b>	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "RESORT" APART FROM THE MARK AS SHOWN

EXHIBIT

**B**

Type of Mark      SERVICE MARK  
Register            PRINCIPAL  
Live/Dead  
Indicator           LIVE

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<a href="#">CURR LIST</a>	<a href="#">NEXT LIST</a>	<a href="#">FIRST DOC</a>	<a href="#">PREV DOC</a>	<a href="#">NEXT DOC</a>	<a href="#">LAST DOC</a>				

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**Serial Number:** 74417693 Assignment Information

**Registration Number:** 2024221 Assignment Information

**Mark (words only):** TREASURE ISLAND AT THE MIRAGE THE ADVENTURE RESORT

**Standard Character claim:** No

**Current Status:** A cancellation proceeding has been filed at the Trademark Trial and Appeal Board and is now pending.

**Date of Status:** 1998-11-10

**Filing Date:** 1993-07-23

**Transformed into a National Application:** No

**Registration Date:** 1996-12-17

**Register:** Principal

**Law Office Assigned:** TMEG Law Office 106

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

**Current Location:** 845 -TTAB

**Date In Location:** 1998-11-10

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**LAST APPLICANT(S)/OWNER(S) OF RECORD**

---

1. Treasure Island Corp.

**Address:**

Treasure Island Corp.  
3300 Las Vegas Blvd. South  
Las Vegas, NV 89109  
United States

**Legal Entity Type:** Corporation

**State or Country of Incorporation:** Nevada

---

**GOODS AND/OR SERVICES**

---

**International Class:** 041

casino services

**First Use Date:** 1993-10-27

**First Use in Commerce Date:** 1993-10-27

**Basis:** 1(a)

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**ADDITIONAL INFORMATION**

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**Disclaimer:** "RESORT"

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**MADRID PROTOCOL INFORMATION**

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(NOT AVAILABLE)

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**PROSECUTION HISTORY**

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2002-12-09 - Section 8 (6-year) filed

2002-12-09 - PAPER RECEIVED

1998-11-10 - Cancellation instituted for Proceeding

1998-11-10 - Cancellation instituted for Proceeding

1996-12-17 - Registered - Principal Register

1996-10-19 - Allowed for Registration - Principal Register (SOU accepted)

1996-09-28 - Statement of use processing complete

1996-07-25 - Amendment to Use filed

1996-02-13 - Notice of allowance - mailed

1995-11-21 - Published for opposition

1995-10-20 - Notice of publication

1995-09-04 - Approved for Pub - Principal Register (Initial exam)

1995-07-07 - Correspondence Received In Law Office

1994-05-23 - Letter of suspension mailed

1994-05-16 - Case file assigned to examining attorney

1994-04-12 - Case file assigned to examining attorney

1994-03-11 - Correspondence Received In Law Office

1994-01-26 - Non-final action mailed

1993-12-17 - Case file assigned to examining attorney

1993-12-15 - Case file assigned to examining attorney

1993-11-30 - Case file assigned to examining attorney

1993-11-17 - Case file assigned to examining attorney

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**CONTACT INFORMATION**

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